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14 Attorneys for Defendant
15 THE SCOTTS MIRACLE-GRO
COMPANY, an Ohio corporation

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19
20 THE IPATT GROUP, INC., a Florida
Corporation, dba WONDER SOIL, a Nevada
21 company, and PATTI DONNER RUBIN, a
Florida resident,

22 Plaintiff,

23 v.

24 THE SCOTTS MIRACLE-GRO
25 COMPANY, an Ohio corporation,

26 Defendant.

Case No. 09-CV-02419 (GMN) RJJ

**REQUEST FOR ORAL ARGUMENT
ON THE SCOTTS MIRACLE-GRO
COMPANY'S MOTION TO
TRANSFER**

1 Defendant, The Scotts Miracle-Gro Company ("Scotts"), respectfully requests that the
2 Court hear oral argument on Scotts' Motion to Transfer. The motion has been fully briefed for
3 nearly a month; the opening papers were filed on April 21, 2010 (Docket Entry No. 9), Plaintiffs'
4 Response was filed on May 10, 2010 (Docket Entry No. 11), and Scotts' Reply was filed on
5 May 20, 2010 (Docket Entry No. 17). The motion seeks to transfer this patent infringement
6 action to the Southern District of Ohio, Eastern Division, because (1) Scotts is located only 30
7 miles from the Columbus, Ohio courthouse, (2) the great majority of documents and witnesses at
8 issue in the case are located at Scotts, (3) Plaintiff is a resident of Florida, significantly closer to
9 Ohio than Nevada, (4) the operative facts of the dispute have nothing to do with Nevada, and
10 (5) trial in the Ohio court is likely to occur sooner than it would in Nevada and will provide jury
11 access to the production lines for the accused EZ Seed® products.

12 After briefing on Scotts' motion to transfer was completed, and in response to Scotts'
13 motion to dismiss, all of the non-patent causes of action in the case, Counts I and II, were
14 voluntarily dismissed (Docket Entry No. 23).¹ Without Counts I and II, the corporate co-Plaintiff,
15 The Ipatt Group, Inc., has dropped out of the suit and is no longer a party. *Id.* at 2. That leaves
16 Florida resident Patti Rubin as the only Plaintiff in this action. As this is now a single-plaintiff
17 action by Rubin involving solely a claim for patent infringement, the judicial factors to be
18 considered when deciding a motion to transfer tilt even more strongly in favor of granting the
19 motion. Oral argument would allow the parties to more fully explain the significance of these
20 new developments without burdening the Court with further briefing.

21 In addition, setting oral argument, and deciding whether the case will proceed here or in
22 the Southern District of Ohio in a timely manner, will increase judicial efficiency. For example,
23 the parties soon will be negotiating and submitting a proposed scheduling and discovery plan, and
24 then undertaking discovery. Knowing in advance whether the case will be heard in the District of
25 Nevada or in the Southern District of Ohio would assist the parties to plan the case. Also, if the

26 ¹ The voluntary dismissal of Counts I and II was filed on behalf of co-Plaintiff The Ipatt
27 Group. On June 18, 2010, Plaintiffs' counsel, John Posthumus, sent an email to Scotts' counsel,
28 Lester J. Savit, clarifying that co-Plaintiff Rubin was not asserting those Counts. Hence, the non-
patent allegations are out of the case.

1 case is going to proceed in another venue, learning of that ruling before submission of the
2 proposed scheduling and discovery plan would avoid the need to duplicate those efforts before
3 another judge.

4 In sum, the Court could materially advance the prospects for timely and efficient
5 resolution of this action by setting a date to hear oral arguments on Scotts' motion to transfer, and
6 expeditiously deciding the motion thereafter.

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8 Dated: June 28, 2010

Respectfully submitted,

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